

**VOLUNTARY CLEANUP CONTRACT
09-5720-NRP**

**IN THE MATTER OF
VICTOR MILL PROPERTY, SPARTANBURG COUNTY
and
SPARTANBURG COUNTY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Spartanburg County, with respect to the Property located at 250 Victor Avenue, Greer, Spartanburg County, South Carolina. The Property includes approximately 24.2 acres identified by Tax Map Serial Number 9-04-05-003.00 (20.927 acres) and 9-04-05-003.01 (3.27 acres). In entering this Contract, the Department relies on the representations of the "Information and Certification" of November 13, 2008 by Spartanburg County, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in applicable S.C. statutes as amended and regulations promulgated thereto, including but not limited to the authorizing statutes above, the S.C. Pollution Control Act, S.C. Code § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act § 44-2-10, et. seq., or in CERCLA if not set forth in the above statutes.

- A. "SPC" means Spartanburg County.
- B. "Beneficiaries" means SPC's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, assigns and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contract" means this Voluntary Cleanup Contract.
- D. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- F. "Property" means the real property as described in the Information and Certification attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of SPC. The Property is comprised of two parcels separated by Victor Avenue, a public road. The two parcels are surrounded by predominantly residential property.

FINDINGS

- 2. Based on the information known by the Department, the following are asserted for this Contract:

A. Owners and Operators: The historical owners and operators of the Property are as follows:

Victor-Monaghan Mills	1890 to 1989
Contractor for 3M	1989 to 1995
Graham, Inc.	1995 to 1996
Graham-Forrester Partnership	1996 to present (Property taxes delinquent since 2004)

B. Property History: Victor-Monaghan Mills initially developed the Property as a textile mill in the late 1890's. The main portion of the mill was located on the larger, southernmost parcel. The smaller parcel located north of Victor Avenue was used for parking. Sanborn maps indicate that the main portion of the mill on the larger parcel housed activities including weaving and spinning, a machine shop, fire water reservoirs, and a boiler room powered by coal. An area north of the mill buildings housed YMCA in 1930. In 1951, a filling station is shown north of the YMCA at the intersection of Victor Avenue and Woodruff Road. Operation of the mill ceased in 1989. The property was later occupied by a sock manufacturer and a contractor for 3M that manufactured tape. The Property transferred to a new owner in 1995. Demolition and salvage operations were conducted 2005 and 2006. In 2006, a portion of the warehouse was destroyed by fire.

C. Current Conditions and Property Description: Currently, the majority of the buildings have been demolished, though remnants of the main mill building and portions of the former warehouses are still standing. Debris piles cover most of the remainder of the Property, including the northern parcel formerly used for parking. Victor Creek enters the Property south of the former warehouse and flows southeast roughly parallel to the southern property boundary until it exits the Property at the eastern boundary and flows on beneath 26th Street. A series of

ponds were formerly located near Victor Creek in the southeast portion of the Property. These ponds were most likely used as reservoirs for fire protection and possibly boiler makeup water. All of the on-site ponds have either been drained or at least partially filled.

D. Phase I Assessment: URS Corporation completed a Phase I Environmental Site Assessment of the Property in September 2007. The Phase I Assessment Report documented the site conditions described above and identified recognized environmental conditions including demolition activities that may have distributed contaminants across the property, a suspected fill area southeast of the former electric substation, former retention ponds that have been filled, a 3-inch pipe near former boiler room (later determined to lead to a UST (underground storage tank), and a discharge pipe near the sediment ponds.

E. Phase II Assessment: TetraTech completed a Phase II Environmental Site Assessment Report, dated July 23, 2008. Assessment activities included sampling and analysis of soil, sediment, surface water and groundwater quality; evaluation of suspected ACM (asbestos containing material) in debris piles and soils beneath the debris piles for asbestos; collection and analysis of four waste samples; and trenching within suspected fill areas.

- 1). Fourteen composite soil samples and two soil grab samples were collected in areas of suspected releases and/or from beneath debris piles. At most locations, samples were collected from both 0-6 inches bls (below land surface) and 12-24 inches bls. At nearly all locations, the higher contaminant concentrations were observed within the 0-6 inch bls sample, although all results are considered to be surface soil samples. All soil samples contained arsenic and/or PAHs (polynuclear aromatic hydrocarbons) above screening levels (EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites). Generally, the highest concentrations occur within the central corridor of the Property, where PAHs were detected at levels four orders

of magnitude above screening levels in some samples. Several locations also contained lead above screening levels. Soil samples collected at the former transformer house contained PCBs (polychlorinated biphenyls) above these criteria and one other location near the former boiler room exhibited elevated detection levels for PCBs.

- 2). Four composite sediment samples were collected from a former retention pond. All samples contained arsenic and PAHs above screening levels. One sample, collected from 0-6 inches from the side of the pond that would receive runoff from the mill, contained PAHs two orders of magnitude above screening criteria.
- 3). Groundwater samples were collected from five temporary monitoring wells. Results reported in the Phase II Assessment Report indicate the presence of arsenic, lead and benzo(a)pyrene at levels slightly above the MCL (maximum contaminant levels) at monitoring well location VM-GW-05, located downgradient of the central portion of the former mill. Two chlorinated solvents, tetrachloroethylene and trichloroethylene, were detected at estimated concentrations below MCLs in all locations except for the background well and the well installed downgradient of the northern parcel, but upgradient of the mill parcel.
- 4). Surface water samples were collected from the retention pond and Victor Creek where it exits the Property. Tetrachloroethylene and trichloroethylene were detected at 10.7 and 0.705 micrograms per liter respectively in the Victor Creek sample. As the surface water concentrations are substantially higher than the levels detected in groundwater on the Property, the source of the chlorinated solvents detected in Victor Creek cannot be definitely attributed to a source on the Victor Mill Property based on current information.
- 5). The contents of four containers, one AST, one UST (associated with the 3-inch pipe observed near the boiler room in the Phase I Assessment), and two drums

were sampled and analyzed during Phase II Assessment activities. Based on the results, all waste material within the four containers appears to be non-hazardous.

- 6). Eight bulk samples of suspected ACM (asbestos containing material) from five debris piles were analyzed for asbestos. Of the eight samples, only the floor tiles located in Station 11 contained asbestos. Soil samples from Station 11 and six other stations were also analyzed for asbestos. Asbestos was not detected in any of the soil samples.
- 7). Assessment of surface water quality conducted by the Department in January 2009 confirms the presence of chlorinated solvents in Victor Creek. This recent data shows that solvent concentrations are less than 1 microgram per liter at the upstream Property boundary and increase to approximately 38 micrograms per liter at the downstream Property boundary. Thus, a source of the contaminants may be present in the southeastern portion of the Property that was not identified by the single monitoring well located in this portion of the Property. Further evaluation of groundwater quality is necessary to better determine whether a source for the solvents is present on the Property.

F. Party Identification: SPC is a South Carolina county government with its principal place of business located at 366 North Church Street, Spartanburg, SC 29303, Spartanburg, South Carolina. SPC certifies that it is a Non-Responsible Party at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property.

G. Proposed Redevelopment: SPC will acquire the Property and intends to complete the terms of the Contract. SPC anticipates either commercial or residential use of the Property.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. SPC certifies that it is a Non-Responsible Party at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. SPC agrees to implement response actions conducted pursuant to a Work Plan approved by the Department. The Work Plan shall be submitted by SPC, or its designee, within thirty days of the execution date of this Contract, or later date if approved by the Department's project manager. The Work Plan shall be in accordance with accepted industry standards. All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., asbestos management, stormwater management and waste disposal regulations). SPC shall identify and obtain the applicable permits before beginning any action. The Work Plan shall set forth methods and schedules for accomplishing response action as specified in all sub-paragraphs below. A phased approach to complete the response actions is acceptable provided the initial Work Plan includes an outline of proposed phases and a general plan and schedule for addressing each phase.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent details of the response actions.
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures (<http://www.epa.gov/region4/sesd/fbqstp/>).
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards and Regulations-R.61-71. The Work Plan shall provide sufficient detail to support issuance of the well approvals.
 - c). The laboratory analyses shall be as required in the media-specific sub-paragraphs below, but may include: 1) the full EPA-TAL (Target Analytical

List); 2) the full EPA-TCL (Target Compound List) or a portion of these parameter lists as specified below.

- d). All analytical methods shall use appropriate detection levels to allow comparison to media-specific screening criteria listed in the “EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites” in effect at the time of sampling. The applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the “MCL-Based SSL” if listed.
- 2). The Work Plan and all associated reports shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 3). The Work Plan shall include the names, addresses, and telephone numbers of SPC's consulting firm(s), analytical laboratories, and SPC's contact person for matters relating to this Contract.
 - a). The analytical laboratory shall possess applicable Certification, as per South Carolina R.61-81, for the test methods to be used during this assessment.
 - b). SPC shall notify the Department in writing of changes in the contractor or laboratory.
- 4). The Department will notify SPC in writing of approvals or deficiencies in the Work Plan.
- 5). SPC, or its designee, shall respond in writing within thirty days to the Department's comments with regards to deficiencies.
- 6). SPC shall implement the Work Plan upon written approval from the Department.
- 7). SPC shall inform the Department at least five (5) working days in advance of all field activities, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 8). SPC shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items

may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. SPC shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

- 9). Addendums to the Work Plan shall be submitted on an as-needed basis in the event further assessment or corrective measures are required. The Department may require:
 - a). additional sample locations or procedures to determine the extent of Existing Contamination, and/or
 - b). implementation of applicable corrective measures if the assessment activities results exceed the screening criteria.

B. Remove any readily identifiable sources of contamination:

- 1). SPC shall characterize and remove from the Property any segregated potential sources of contamination and hazardous substances no longer in use on the Property (e.g., asbestos containing material, drums, tanks, containers, transformers, etc.). All potential sources of contamination or hazardous substances discovered at any time during assessment, corrective action or redevelopment activities shall be expeditiously characterized and removed from the Property in accordance with applicable regulations. Currently known potential sources of contamination and hazardous substances that shall be removed from the Victor Mill Property include those listed below. All references to "Stations" refer to the numbered sampling areas as identified in the Phase II Environmental Site Assessment Report, prepared by Tetra Tech, dated July 23, 2008 (Tetra Tech Report).
 - a). ASTs (aboveground storage tanks), including an 8,000-gallon AST and approximately 600 gallons of content material,

- b). UST (underground storage tank) located near the 8,000-gallon AST.
 - c). Two drums and their contents located just north of former warehouse building,
 - d). Floor tiles identified as ACM (asbestos containing material) in Station 11.
Note that other ACM may be present in buildings and any debris piles not evaluated during the Phase II Report and shall be characterized and managed in accordance with applicable regulations.
 - e). Coal and coal dust, predominantly located in Station 25 and surrounding areas as identified in the Phase II Report, and
 - f). Wood and other material that may have been contaminated by hazardous constituents, petroleum products, or painted with lead-based paint.
- 2). All removal and disposal activities undertaken at the Property shall be consistent with all laws and permitting requirements of the Department, including, but not limited to, asbestos management, stormwater management, and waste disposal regulations. SPC shall identify and obtain the applicable permits before initiating any actions.
 - 3). Should SPC propose to leave any building debris on the Property, SPC must demonstrate that the material meets all requirements for structural fill and comply with applicable Solid Waste Landfill and Structural Fill Regulations.
 - 4). Records documenting removal and disposal of all material removed from the Property shall be provided to the Department within thirty (30) days of disposal
 - 5). SPC shall immediately notify the Department if a release of contamination occurs or is identified during removal of the sources. SPC shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

C. Assess soil quality across the Property:

- 1). SPC shall collect and analyze soil samples to determine soil quality in some

areas that have not yet been assessed, and to characterize the extent of soil contamination identified in the Tetra Tech Report. In all sampling activities described below, surface soil samples shall be collected from 0-1 feet bls and subsurface soil samples shall be collected from greater than 2 feet bls.

- a). SPC shall characterize site-specific background arsenic concentrations in soil through collection of surface soil samples from three different presumed background locations either on the Property or in the immediate vicinity of the Property. Soil samples shall be analyzed for TCL semi-volatile organic compounds and TAL parameters. SPC shall propose a site-specific background concentration for arsenic based on the results from samples shown to be representative of naturally occurring background conditions. However, if the Department establishes an arsenic concentration in soils that can be used as a background concentration within the State of South Carolina, SPC may choose to utilize DHEC's background concentration rather than using a site specific background for arsenic.
- b). SPC shall conduct soil assessment in areas outside the main mill area that were not previously assessed and that exhibit evidence of past activity. Surface and subsurface soil samples shall be collected on a 200-foot grid in the area south of the former transformer house (Station 22) (approximately eight locations) and the area northwest of Station 19 (approximately three locations). Samples from a minimum of one location in each area shall be analyzed for the full TAL/TCL (except cyanide) parameter list. All other soil samples shall be analyzed for arsenic, lead, and TCL PAHs. Analysis for TCL VOCs shall be included for any sample that exhibits evidence of VOCs based on field screening.
- c). SPC shall assess soil quality in the vicinity of a former gas station, identified on a 1951 Sanborn map, that was located at the intersection of Victor Avenue and Old Woodruff Road at the northern end of the Property.

Assessment shall include a geophysical survey or other measures to identify the location of any underground storage tanks and collection and analysis of a minimum of three surface and subsurface soil samples at locations based on the geophysical survey. Analytical parameters shall include TCL volatile organic compounds, semi-volatile organic compounds, and TAL metals.

- d). Additional soil sampling, and/or trenching or geophysical surveys may be necessary should further evaluation of the source of chlorinated solvents detected in Victor Creek indicate the presence of an onsite source.
- 2). Further evaluation is needed to determine the extent of contaminants in soil identified in the Tetra Tech Report. SPC may conduct the sampling activities identified below to develop a more detailed characterization of the extent of contaminants prior to developing a plan to address the contaminated soil. Or, upon development of soil remedial goals (appropriate for the future use of the Property and considering any engineering controls that may be implemented in accordance with the requirements of Paragraph 4.F. of this Contract), SPC may proceed with removal of contaminated soil identified within the central corridor of the Property in accordance with a Department approved Work Plan that includes appropriate field screening during soil removal activities, confirmation sampling for the specific contaminants in each area identified below, and soil characterization for disposal.
- a). In all areas where contaminants in soil were identified, further evaluation is needed to determine the vertical extent of contaminants.
 - b). SPC shall further evaluate the extent of PAHs, PCBs, arsenic, and lead in soil in the vicinity of the former electrical substation (Station 22). Assessment shall include collection of surface and subsurface soil samples from a minimum of five locations. All soil samples shall be analyzed for TCL PAHs and PCBs, and arsenic and lead.
 - c). After proper removal and disposal of asbestos containing floor tiles located

- in the Station 11 as required in Paragraph 4.B. above, SPC shall further evaluate the extent of lead and PAHs in soil in Station 11. Assessment shall include collection of surface and subsurface soil samples from a minimum of five locations. All soil samples shall be analyzed for lead, and TAL PAHs.
- d). SPC shall further evaluate the extent of metals and PAHs in soil in the vicinity of Station 19. Assessment shall include collection of surface and subsurface soil samples from a minimum of three locations. All soil samples shall be analyzed for barium, lead and TAL PAHs.
- e). SPC shall further evaluate the extent of lead, PCBs and PAHs in the vicinity of Station 6. Assessment shall include collection of surface and subsurface soil samples from a minimum of three locations. All soil samples shall be analyzed for lead and TAL PCBs and PAHs.
- 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

D. Assess groundwater quality

- 1). SPC shall assess groundwater quality in the vicinity of a former gas station identified on a 1951 Sanborn map and located at the intersection of Victor Avenue and Old Woodruff Road at the northern end of the Property. Assessment shall include installation and sampling of a minimum of one monitoring well constructed to intersect the water table. Analytical parameters shall include TCL volatile organic compounds, semi-volatile organic compounds, and TAL metals.
- 2). Additional groundwater sampling shall be conducted to further evaluate potential onsite sources of chlorinated solvents detected in Victor Creek. SPC shall assess groundwater quality from a minimum of two additional monitoring wells to be installed in the southeastern portion of the property near Victor Creek. One monitoring well shall be located south of Victor Creek and the

other well shall be located north of Victor Creek. Groundwater samples from both wells shall be analyzed for TCL volatile organic compounds.

- 3). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for “Tapwater”, if not specified in R.61-58.

E. Assess Sediment and Surface water quality:

- 1). Further assessment of surface water quality may be required dependent on SPC’s proposed use for the Property. Additionally, should further groundwater assessment indicate an onsite source for the chlorinated solvents detected in Victor Creek requiring response actions, further assessment of surface water quality in Victor Creek may be necessary to evaluate the effectiveness of the response actions.
- 2). Surface water quality results shall be compared to the values in the SC Water Classifications and Standards, R.61-68, based on consumption of either “water and organisms” or “organisms only” as applicable for the water body. Sediment samples shall be compared to the Ecological Screening Values in EPA Region 4 Ecological Risk Assessment – Supplement to RAGS (<http://www.epa.gov/region4/waste/ots/ecolbul.htm>).

F. Institute reasonable contamination control measures

- 1). SPC shall take reasonable measures, approved by the Department and consistent with the intended future use of the Property, to limit or prevent impact to human health or the environment from Existing Contamination on the Property. Based on currently available data, SPC shall implement the control measures specified below. Additional control measures may be necessary based on the additional assessment activities required under this Contract.
 - i. Surface soil across the Property contains arsenic and PAHs

(polynuclear aromatic hydrocarbons) above levels acceptable for unrestricted use. Additionally, soil in limited areas of the Property contains lead and/or PCBs above levels acceptable for unrestricted use. SPC shall implement appropriate corrective measures including contaminated soil removal and, if necessary based on remaining contaminant levels in soil, installation of appropriate engineering controls to prevent exposure to contaminated soil.

- ii. Groundwater quality on the Property was assessed during Phase II Assessment activities conducted by EPA through their environmental contractor TetraTech. Results reported in the Phase II Assessment Report indicate the presence of arsenic, lead and benzo(a)pyrene at levels slightly above regulatory levels. Based on these results, SPC shall agree to land use restrictions to prohibit future groundwater use.
- iii. Surface water quality on the property is impacted with chlorinated solvents above regulatory levels. SPC shall take appropriate measures to limit or prevent exposure to contaminants present in surface water on the property.

G. Monitor and/or abandon the monitoring wells:

- 1). SPC shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors. The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 2). SPC shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. SPC shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. SPC agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by SPC.

PUBLIC PARTICIPATION

6. SPC and the Department will foster public participation to implement this Contract as follows:
 - A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C statutes upon signature of this Contract by SPC.
 - B. SPC shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign will state "Voluntary Cleanup Project by Spartanburg County under Voluntary Cleanup Contract 09-5720-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of SPC. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
 - 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.

- 3). SPC shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). SPC agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). SPC shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, SPC shall restore the sign within two days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. SPC shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within 90 days of the execution date of this Contract and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
 - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
 - B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

SCHEDULE

8. SPC shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. SPC shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. SPC or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Covenant) for the Property if contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:
 - A. The Department shall prepare and sign the Covenant prior to providing it to SPC. An authorized representative of SPC or its Beneficiaries shall sign the Covenant within ten days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
 - B. SPC or its Beneficiaries shall file the executed Covenant with the Registrar of Deeds for the county where the Property is located.
 - C. SPC or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page number where the Covenant has been recorded.
 - D. In the event that contamination exceeds residential standards on a portion of the

Property, SPC or its Beneficiaries may create a new parcel that will be subject to the Covenant.

- E. The Covenant shall be recorded on the master deed of any residential development planned for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Covenant.
- F. The Covenant shall reserve a right of entry and inspection for SPC or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). SPC or its Beneficiaries shall ensure that the restrictions established by the Covenant remain on any subdivided property.
 - 2). SPC or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Covenant regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. SPC or its Beneficiaries, or the entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Covenant to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.
- H. The Department may amend the Covenant in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be

duly executed and recorded with the county using procedures similar to those detailed above.

NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing.

Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial delivery service company; or, 4) hand delivery to the other party.

A. All correspondence to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Angela Gorman
SCDHEC, Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. SPC's designated contact person as of the effective date of this contract shall be:

Spartanburg County Assistant Administrator
P. O. Box 566
Spartanburg, South Carolina 29304

FINANCIAL REIMBURSEMENT

11. SPC or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to SPC on a quarterly basis. In recognition of SPC's non-profit status, the Department may waive reimbursement of oversight costs, exclusive of the cost incurred for public participation. The Department reserves the right to re-instate oversight billing upon thirty-day notice to SPC; however, said billing shall not include any costs incurred by the Department prior to receipt of the notice. All costs are payable within thirty days of receipt of the Department's invoice submitted to:

Spartanburg County Assistant Administrator
P. O. Box 566
Spartanburg, South Carolina 29304

ACCESS TO THE PROPERTY

12. SPC agrees the Department has an irrevocable right of access to the Property after SPC acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:

A. SPC shall request a Certificate of Completion after the response actions are

completed and any required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.

- B. The Department will issue the Certificate of Completion with its covenant not to sue for matters expressly covered in this Contract upon determining that SPC has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that SPC or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if SPC or its Beneficiaries do not satisfactorily complete the requirements of the Contract.

ECONOMIC BENEFITS REPORTING

- 14. SPC or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two years after the execution date of this Contract, and annually until two years after redevelopment of the Property is complete. SPC shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

TRANSFER OF CONTRACT

15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, SPC, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion of the Property:
- A. SPC or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
 - B. SPC and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property.
 - C. If the Certificate of Completion has not been issued, SPC or its Beneficiaries shall seek approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new entity. The protections shall not inure to an entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new entity showing it:
 - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, SPC or its Beneficiaries shall provide written notification to the Department identifying the new entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.
- 2). This requirement is waived for an entity acquiring a portion of the Property for individual residential use provided the Covenant is recorded on the master deed for the residential development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

E. If a Certificate of Completion has been issued and the Property is not subject to a Covenant or other continued obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. SPC, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party.

Termination shall be subject to the following:

A. The Department may terminate this Contract only for cause and shall provide opportunity for SPC or its Beneficiaries to correct causes of termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms of this Contract;
- 2). Change in SPC's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this

Contract;

- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of SPC or its Beneficiaries to implement appropriate response actions for additional contamination or releases caused by SPC or its Beneficiaries, or
- 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by SPC or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this contract; or,
- 7). Failure by SPC or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of SPC's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

B. Should SPC or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by SPC or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.

C. Termination of this Contract by any party does not end the obligations of SPC or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.

D. The protections provided to SPC or its Beneficiaries shall be null and void as to any party directly or indirectly in activities giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers,

employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party not involved with the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. SPC and its Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
 - 1). Protection from CERCLA contribution claims.
 - 2). Protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site.
- B. Effective on the date the Certificate of Completion is issued by the Department:
 - 1). The Department's covenant not to sue SPC and its Beneficiaries for Existing Contamination except for releases and consequences caused by SPC or its Beneficiaries.
 - 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.
 - 3). These Protections and Benefits do not apply to any contamination, releases, and consequences caused by SPC and its Beneficiaries.
- C. The Department retains all rights under State and Federal laws to compel SPC and its Beneficiaries to perform or pay for response activity for contamination, releases and consequences created by SPC or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than SPC and its

Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties other than SPC and its Beneficiaries to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY SPC

19. SPC retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. SPC and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, SPC and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. SPC and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to the Company or its Beneficiaries. SPC and its Beneficiaries shall make this demonstration to the Department's satisfaction. For purposes of this clause, newly discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY SPC AND ITS BENEFICIARIES

21. In consideration of the protections from the Department, SPC and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____ DATE: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management

Approved by Office of General Counsel

DATE: _____

Spartanburg County

BY: _____ DATE: _____

Printed Name and Title

APPENDIX A